

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 16, 2007

To: The Commission
(Meeting of May 24, 2007)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

**Subject: SB 451 (Kehoe) Energy: governmental energy producers.
As Amended: May 2, 2007**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT WITH
TECHNICAL AMENDMENTS**

SUMMARY OF BILL:

This bill would add Section 2840 to the PU Code to permit city, county or joint powers customers (customers) to generate renewable energy at one location and receive a bill credit at another location.

The bill credit would apply to an account chosen by the customer and would be at the generation component of the rate. The bill requires that the account being credited be on a time-of-use rate.

The utility would be able to change the customer's tariff after the customer identifies the account to be credited.

According to the author's staff, the bill is intended to allow local governments to credit their renewable electric generation against their usage, no matter where the usage is located. It's as if the local government offices were electrically connected and billed as a single customer. This concept allows the local government to build a larger renewable generation plant than it might otherwise, taking advantage of scale economies.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

When an IOU makes a sale, the customer pays for electric generation at the generation component of the customer's tariff.

The bill requires that a non-TOU (time of use) account be placed on a TOU rate in order to receive a credit for renewable generation. Our experience has been that non-TOU customers forced onto TOU rates can see their bills increase even with a generation credit. For that reason, the language requiring that the account to be credited be on a TOU rate should be stricken.

Also, the bill permits customers and the utilities to jockey for the most favorable tariff, setting off a potential flood of advice letters. First, the bill permits the utility to file an advice letter to change the tariff even if the account designated to receive the generation credit is already on a TOU rate. Second, the bill permits the customer to respond by changing the account to be credited, with a 60 day notice to the utility. This would lead to a flood of advice filings as utilities jockey for the TOU tariff with the lowest generation credit and the highest bill, while customers jockey for the tariff with the highest generation credit and the lowest bill. It is preferable to permit the customer to designate one time the account to receive the generation credit and to not permit the utility to change the customer's otherwise applicable tariff. Therefore, the language permitting the utility to change the customer's tariff should be eliminated.

If the amendments proposed below are accepted, there will be no additional advice letters and cost impact on the PUC will be minimal.

If the amendments are not included in the bill there will be a fiscal impact of \$102,558.

SUMMARY OF SUGGESTED AMENDMENTS (if any):

Language should be stricken from the proposed Section 2840(b) as follows:

~~(1) A benefiting account receives service under a time-of-use rate schedule.~~

~~(2) The electrical output of the eligible renewable generating facility is metered for time of use to allow allocation of each bill credit to correspond to the time-of-use period of a benefiting account.~~

(3) All costs associated with the metering requirements of paragraphs (1) and (2) are the responsibility of the city, county, city and county, or joint powers agency formed by a city, county, or city and county.

Language should be stricken from the proposed Section 2840(e) as follows:

(e) A city, county, city and county, or joint powers agency formed by a city, county, or city and county shall provide the electrical corporation to which the eligible renewable generating facility will be interconnected with not less than 60 days' notice prior to the eligible renewable generating facility becoming operational. ~~The electrical corporation shall file an advice letter with the commission, that complies with this section, not later than 30 days after receipt of the notice, proposing a rate tariff for a benefiting account. The commission, within 30 days of the date of filing, shall approve the proposed tariff, or specify conforming changes to be made by the electrical corporation to be filed in a new advice letter.~~

DIVISION ANALYSIS (Energy Division):

- The bill addresses a problem that exists where the potential for renewable electric power generation is a different location to load, rendering a governmental customer in eligible for net metering of that renewable generation.
- The bill does not introduce distribution wheeling or bypass because the bill credit is limited to the generation component and does not include any credit for avoided costs of transmission or distribution service, or non-bypassable charges.
- The Commission will not need to set power purchase rates or review power purchase agreements.
- PU Code 399.20, adopted in 2006 as AB 1969, permits water or wastewater agencies to sell renewable generated electricity to the utility at the predetermined Market Price Referent. Similarly, the proposed bill permits local government customer generators to sell renewable electricity at a predetermined price.
- PU Code 2827.9, enacted in 2002 by AB 2228 and amended in 2005 by AB 728, permits biogas digester customer generators to net meter and to aggregate load, with the net metering credit set at the generation component of the otherwise applicable tariff. Similarly, the proposed legislation permits local governments to credit renewable generated electricity at the generation component of an otherwise applicable tariff. The difference is that the bill would permit the generator to credit generation against load that is not at the same site as the generation.
- Allowing a customer generator to obtain a credit for generation against load at a different location requires a change to the Public Utilities Code. Legislation is necessary because PUC cannot change the Code.

- The proposed legislation will help the Commission achieve its goal of fostering renewable customer generation.

PROGRAM BACKGROUND:

- See above for background PUCODE Sections 300.20 and 2827.9. Those sections are not impacted by this legislation. However, water and wastewater agencies operating under a joint powers agreement could opt to participate in the proposed legislation if the bill credit based on the generation portion of the otherwise applicable tariff is higher than the Market Rice Referent.
- If the proposed amendment is not included in the final version of the bill, Commission workload to process advice letters could increase substantially, and the Commission may not be able to adequately address advice letter proposals that require changes.

LEGISLATIVE HISTORY:

N/A

FISCAL IMPACT:

- \$102,599 - The Commission staff already process large numbers of advice filings from utilities. Energy Division has suggested in the bill analysis that the utility not be permitted to require a TOU tariff or to change the customer's tariff.
- If the amendments are approved, few additional advice letters would be expected to come before the commission, mitigating the need for additional staff. On the other hand, if the proposed amendments are not approved, the commission would need to dedicate a regulatory analyst level 4 full time to processing advice letters by utilities seeking to change the tariff under which local governments are credited for renewable generation. The fiscal impact would be \$102,559.

STATUS:

SB 451 is pending hearing in the Senate Appropriations Committee.

SUPPORT/OPPOSITION:

Support: California Coalition of Utility Employees
San Diego Regional Energy Office

Opposition: None on file.

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Date: May 16, 2007

BILL LANGUAGE:

BILL NUMBER: SB 451 AMENDED
BILL TEXT

AMENDED IN SENATE MAY 2, 2007
AMENDED IN SENATE APRIL 16, 2007

INTRODUCED BY Senator Kehoe

FEBRUARY 21, 2007

An act to add Chapter 8 (commencing with Section 2840) to Part 2 of Division 1 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 451, as amended, Kehoe. Energy: governmental energy producers.

Under existing law, the Public Utilities Commission is vested with regulatory authority over public utilities. Existing law permits a private energy producer to generate electricity not generated from conventional sources, as defined, solely for its own use or the use of its tenants, or to or for any electrical corporation, state agency, city, county, district, or an association thereof, but not the public, without becoming a public utility subject to the general jurisdiction of the commission. Existing law requires the commission to review the charges paid by electrical corporations to private energy producers for that electricity and related standby and transmission charges and, after the review, to adjust those charges to encourage the generation of electricity from other than conventional power sources. Existing law authorizes the City of Davis to receive a bill credit, as defined, to a benefiting account, as defined, for electricity supplied to the electric grid by a photovoltaic facility located within and partially owned by the city and requires the commission to adopt a rate tariff for the benefiting account.

This bill would authorize a city, county, city and county, or joint powers agency formed by a city, county, or city and county to receive a bill credit, as defined, to a benefiting account, as defined, for electricity supplied to the electric grid by an eligible renewable generating facility, as defined, and requires the commission to adopt a rate tariff for the benefiting account.

Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime. Because the provisions of this bill would require an order or other action of the commission to implement and a violation of that order or action would be a crime, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 8 (commencing with Section 2840) is added to Part 2 of Division 1 of the Public Utilities Code, to read:

CHAPTER 8. GOVERNMENTAL ENERGY PRODUCERS

2840. (a) As used in this section, the following terms have the following meanings:

(1) "Benefiting account" means an electricity account, or more than one account, mutually agreed upon by a governmental entity and an electrical corporation.

(2) "Bill credit" means credits calculated based upon the electricity generation component of the rate schedule applicable to a benefiting account, as applied to the quantities of electricity generated by an eligible renewable generating facility.

(3) "Eligible renewable generating facility" means a generation facility that is an eligible renewable energy resource pursuant to the California Renewables Portfolio Standard Program that is owned or operated by a city, county, city and county, or joint powers agency formed by a city, county, or city and county.

(4) "Environmental attributes" associated with an eligible renewable generating facility include, but are not limited to, the credits, benefits, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances, however entitled resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the eligible renewable generating facility.

(b) A city, county, city and county, or joint powers agency formed by a city, county, or city and county may elect to designate a benefiting account, or more than one account, to receive bill credit for the electricity generated by an eligible renewable generating facility, if all of the following conditions are met:

(1) A benefiting account receives service under a time-of-use rate schedule.

(2) *The benefiting account is the responsibility of the same city, county, city and county, or joint powers agency that owns the eligible renewable generating facility.*

~~—(2)—~~

(3) The electrical output of the eligible renewable generating facility is metered for time of use to allow allocation of each bill credit to correspond to the time-of-use period of a benefiting account.

~~—(3)—~~

(4) All costs associated with the metering requirements of paragraphs (1) and ~~—(2)—~~ (3) are the responsibility of the city, county, city and county, or joint powers agency formed by a city, county, or city and county.

~~—(4)—~~

(5) All electricity delivered to the electrical grid by the eligible renewable generating facility is the property of the electrical corporation that provides for interconnection.

~~—(5)—~~

(6) The city, county, city and county, or joint powers agency formed by a city, county, or city and county does not sell electricity delivered to the electrical grid to a third party.

~~—(6)~~

(7) The right, title, and interest in the environmental attributes associated with the electricity delivered to the electrical grid by the eligible renewable generating facility are the property of the electrical corporation.

(c) A benefiting account shall be billed on a monthly basis, as follows:

(1) For all electricity usage, the rate schedule applicable to the benefiting account shall be the rate schedule of the benefiting account, including any cost-recovery surcharge or other cost recovery mechanism, as determined by the commission, to reimburse the Department of Water Resources for purchases of electricity, pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(2) The rate schedule for the benefiting account shall also provide credit for the generation component of the time-of-use rates for the electricity generated by the eligible renewable generating facility that is delivered to the electrical grid. The generation component credited to the benefiting account may not include the cost-responsibility surcharge or other cost recovery mechanism, as determined by the commission, to reimburse the Department of Water Resources for purchases of electricity, pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(3) If in any billing cycle, the charge pursuant to paragraph (1) for electricity usage exceeds the billing credit pursuant to paragraph (2), the city, county, city and county, or joint powers agency formed by a city, county, or city and county shall be charged for the difference.

(4) If in any billing cycle, the billing credit pursuant to paragraph (2) exceeds the charge for electricity usage pursuant to paragraph (1), the difference shall be carried forward as a credit to the next billing cycle.

(5) After the electricity usage charge pursuant to paragraph (1) and the credit pursuant to paragraph (2) are determined for the last billing cycle of a calendar year, any remaining credit resulting from the application of this section shall be reset to zero.

(d) Not more frequently than once per year, and upon providing the electrical corporation with a minimum of 60 days' notice, the city, county, city and county, or joint powers agency formed by a city, county, or city and county may elect to change a benefiting account. Any credit resulting from the application of this section earned prior to the change in a benefiting account that has not been used as of the date of the change in the benefit account, shall be applied, and may only be applied, to a benefiting account as changed.

(e) A city, county, city and county, or joint powers agency formed by a city, county, or city and county shall provide the electrical corporation to which the eligible renewable generating facility will be interconnected with not less than 60 days' notice prior to the eligible renewable generating facility becoming operational. The electrical corporation shall file an advice letter with the commission, that complies with this section, not later than 30 days after receipt of the notice, proposing a rate tariff for a benefiting account. The commission, within 30 days of the date of filing, shall approve the proposed tariff, or specify conforming changes to be

made by the electrical corporation to be filed in a new advice letter.

(f) The city, county, city and county, or joint powers agency formed by a city, county, or city and county may terminate its election pursuant to subdivision (b), upon providing the electrical corporation with a minimum of 60 days' notice. Should the city, county, city and county, or joint powers agency formed by a city, county, or city and county sell its interest in the eligible renewable generating facility, or sell the electricity generated by the eligible renewable generating facility, in a manner other than required by this section, upon the date of either event, and the earliest date if both events occur, no further bill credit pursuant to paragraph ~~(2)~~ (3) of subdivision (b) may be earned. Only credit earned prior to that date shall be made to a benefiting account.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.